

PUBLIC HEARING -TOWN OF SHELBY

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Proposed Local Law #1 Local Law establishing the Code of Ethics of the Town of Shelby

September 12, 2023

6:30 PM

Present: Scott Wengewicz, Supervisor
Steve Seitz, Councilman
John Pratt, Councilman
Ed Zelazny, Councilman
Jeff Schiffer, Councilman
Darlene Rich, Town Clerk
Dorothy Nolan, Deputy Clerk
Jeff Clark, Attorney
Claude Grimes, Constable
Dan Wolfe, Code Enforcement Officer
Miranda Bennett, Bookkeeper

Others	Michael Rich	Sharlene Pratt
	Alan Bushover	Leona Weese
	Karen Dillon	Linda Limina
	Julie Wolter	Bill Wolter
	Brian Murray Sr.	Gabrielle Barone
	Karen Jones	Alana Koneski
	Jim Heminway	Shaun Oberther
	Emilee Oberther	James Zelazny
	Rosanne Russo	Jim Conway
	Joy Waters	Lawrence Waters
	Katy Rich	John Parada
	Scott Carlton	

Public Hearing was called to order at 6:30 PM

Purpose of the Public Hearing- To hear comments for and against the proposed Local Law #1 of 2023 “A Local Law establishing the Code of Ethics of the Town of Shelby”

Public Comments:

Karen Jones- thanked the board for coming up with a code of ethics for elected officials. One section with major concern to her was section 4 (SEQRA). On August 14 she did ask questions to Kathleen Bennett, Town Attorney about SEQRA and 6 NYCRR Part 617 and proposed amendments to the zoning law. Kathleen Bennet said “the existing handbook was not as complete as she wanted it to be. “Karen said she is very confused by the wording of section 4. Especially what is 6 NYCRR part. 617 and what amendments would make the zoning code followed by the statement and no further review of what is required under SEQRA. Why is there a reference to an environmental law in a local law that has nothing to do with a project of any kind in a meeting of an environmental review. It was clearly presented at the August board meeting as a law related to nothing but ethics. Karen went on the DEC website on her own and found that 6 NYCRR refers to part 617 of the State Environmental Quality Review Act and references adopting amendments in SEQR regulations, a streamline to improve the SEQR process. The wording is confusing as she is not a lawyer. An ethics law out of the blue with no real discussion or explanation beyond the town lawyer saying that the town’s existing handbook wasn’t as complete as she wanted it to be just doesn’t answer the biggest question of all which is, does this proposed Local Ethics Law in any way impact or relate to the request by Borrego wind to site two 640 Foot wind turbines and the still incomplete SEQR begun last fall regarding those turbines? Does it relate generally in any way to the Towns’ permitting and siting process? If any town board member is unable to answer no to those specific questions, then she implores them to table the vote on this resolution tonight. If any town board member is unable to explain why Section 4 and the SEQRA is part of this local law then I implore you to table the vote tonight until they are certain personally you know what’s in it before you sign it. Within your proposed local law establishing a code of ethics there is so much to admire. You clearly established that serving in public office is not about serving oneself. It holds elected officials very high at admiral standards. Almost in its entirety the proposed law is laudable and worthwhile but also in it is a wrinkle, one worth ironing out before you vote. Section 4 should be eliminated entirely. I have heard this section of law is nothing, it is required language. She does not believe this is accurate. According to NYS guidance (she had handouts for board entitled: State Environmental Review Act” frequently asked questions for local officials. It is only required if the project effects the environment or if it commits the municipality to a definite course of further decisions such as a municipality’s comprehensive plan. (pg 10 of document she handed out). There is no mention anywhere in the law of a project that involves altering the physical landscape of the Town of Shelby. There is no mention anywhere of a zoning or code change or amendment, at least not in language that

people understand. There is only this reference to Article 8 of the Environmental Conservation Law and regulations adopted there under at 6 NYCRR part 617, so why does section 4 of your law mention an amendment to the zoning and then conclude by saying no review is required because the proposed amendment will not result in any significant adverse environmental impact, environmental impacts on what? Can any of the board members answer the questions I have tonight regarding section 4? Can the Town Attorney? And if you cannot then I respectfully ask that you table tonight's vote until you can."

Supervisor-Code of Ethics Law- The reason we have this code of ethics law is so for everyone sitting up at this bench. The employee code of ethics does not apply to elected officials. This law applies to elected officials and appointed officers so that's why we have the employee code of ethics plus we have this code of ethics so they are held to these standards. The question about Borrego- if he had a project on his property, he can't even be in the room, he would have to leave and the rest so of the board would discuss it. That's the integrity, that's what this code of ethics is, that's why we're doing it. Jeff Allen -Town Attorney- (sitting in for Kathy Bennett who is the town attorney) spoke regarding SEQR. He is also with the same law firm and has been working with the Town of Shelby for almost a decade now. In addition to what was just stated a code of ethics is required by New York State's General Municipal Law so that's the other reason this is being put forth. The language in what is proposed including and he said he will focus on section 4, obviously coming from the NYS Comptroller's website. What is this section for. Section 4 applies to the board members here. In the event and only in the event there is a proposed amendment to the town zoning law proposed doesn't mean there's something sitting there now in fact he's unaware of anything sitting there now that this is directly applicable to but if there is a proposed change to the current zoning law and that change would result pursuant to NCYRR 617 and Article 8 of the Environmental Conservation law. If that proposed change would result in a significant environmental impact, then the board would need to submit it to SEQR for further review. If the board determined that a proposed amendment would not have a significant environmental impact then they would not need to submit it to the state for further review. In other words, it's giving the board more autonomy. Karen Jones asked why not include the sentence if there were a proposed change to the current zoning law that change would result in a significant environmental impact then the boards would need to submit to SEQR review? Why do you only have the other side of it if it did not it would not need SEQR review. Jeff-Because they are not the same thing. Now well I'll answer this because your actually correct it would need to go to SEQR for review if there would be a proposed or the proposed amendment would result in a significant environmental impact , that is codified elsewhere. This is a Code of Ethics of

within SEQR code provisions. I don't have the exact code provision in front of me but this is a Code of Ethics, this is not the environmental law. The environmental law, the separate body of laws under SEQR-they require exactly what she just suggested. Karen- "That clarified statement is encouraging. I like that part and I understand you can't put all 617 in a local ethics law because it's more than 100 pages long however that one sentence you just said by including that it would reassure the public in her humble opinion to say there is one verses the other that a local law proposed by an actual member of an elected official proposing an amendment that would be sorry if that proposed change to the current zoning law could result in a significant environmental impact then the board would need to submit that to SEQR review including just that function along with what's already there helps us see you are not hiding anything. " Jeff-thinks it's a good point and that just to be clear the board did not instruct the attorney to write this . It is literally straight from New York State Comptrollers suggested language. Karen asked if he had the document where we could read it. It is available at the comptroller's website. She stated the attorneys can find those things better than she can and she said that's her point in terms of clarity that's what she rails every month about clarity and transparency and she thinks this section is valuable and really helpful if we can see in writing that sentence that was exciting. Jeff said that is something the board will need to consider. Karen said again this is why I don't want you to vote on it tonight. If there is even a little bit of wiggle room on language. What's wrong with waiting one month to clarify and make that statement better or eliminate it just because NY State said you had to use it in the evolution of the law doesn't mean every town has included it. In fact some towns for instance for their ethics laws included a board of community members to serve as an ethics board, something you could include. There are other ways you could look at this before you vote. Jim Hemingway-"still at the end of the day he doesn't understand why section 4 and again I think there's Ethics policy is long overdue again applauds the board for proposing this and pursuing it. He read through it and it makes a lot of sense and I again thank you for taking the time to put something together. He does not see the value of Section 4 and then your answers I still don't'; understand how a change to the process of SEQR or proposal to change the zoning has anything to do with the rest of the ethics section and certainly we look for clarification on that I don't see to me that's a separate entity and a separate discussion whether it takes another hearing a public hearing to better understand. What makes me feel a little uncomfortable is I did not get into your wording of what this section 4 is describing is that the board can without really any input make changes to the zoning that would have an impact to SEQR. Then you could change zoning, it could change the way the SEQR process is viewed. Am I incorrect on that statement? It doesn't need to be voted on the board can just make

up the sport could sit there and say from now on we're going to have a change for the zoning law that less acreage is involved in a particular design that is currently is spelled out of the zoning. Is that correct they could just go ahead and do that?" Jeff said no. There are a couple of things. One is can the board make changes to the zoning code. Set aside the SEQR, set aside the code methods. Can they do that? Yes they can." There is a process by which there would be a proposed amendment to the zoning code and ultimately a vote and if the vote is yay and there's a change to the zoning code then that would be implemented. The only time that this code of ethics with this section 4 would come into play is if that proposed amendment would have a significant impact on the environment." Jim- "Who makes that determination?" Jeff- "SEQR makes that determination. Under SEQR there are and as Keren mentioned the SEQR code provisions are voluminous. If there is a determination, the board is trying to act ethically, in this provision is intended to assure the public you in my town be that my town board is doing the right thing ethically. And what that means in this provision is that if this proposed amendment would not have significant impact then they don't need to report it to SEQR. They are not changing SEQR. Jim said he knew that but they are changing some of the bases for pursuing a SEQR. Jeff- "This really doesn't change how SEQR is applied, what it does it gives the town the voters in this town the ability to hold this board accountable for its decisions. There is no more public vote. Dealing with two issues. SEQR applies no matter what, whether this is in there or not applies to everyone. The code of ethics if adopted and some version does need to be adopted whether this is in or out, the code of ethics simply says if these guys do something wrong then they violated the code of ethics and they can be held accountable for that violation in and of itself. The states going to do whatever its going to do under SEQR. Jim- "some of those things are pretty hard to prove in terms of why a certain decision is made whether is actually violates any code of ethics, you see things all the time. In the past there has been some trouble in terms of trust of the board and lack of transparency. We now are in another board that has promised a lot of transparency with changes. I see things like this is an ethics policy without a lot of explanation and it's not being very transparent and it makes me doubt the process right from the beginning. I get this thing; it gets published there is no detail anywhere and without you here explaining some of it there isn't any idea I still don't have a good grasp of why that section was in this. The rest of it makes sense. Ethics okay, it's pretty straight forward but tying it to the SEQR into zoning change makes no sense. So if you're going to vote on it I say table it if you can. Take that part out of it. I would feel a lot better about the transparency of the board that they are doing it right today. We've had a lot of issues, there's a lot of mistrusts. I'm sorry, I wish what happened in the last several years, didn't have to say that but some things that happened in the last several

years and you can, you know reference the lawsuit that was just filed yesterday. A decision made by this board to join the sewer thing. That's not a trustworthy thing. I know a lot of you were not involved in it some of you were. When I see this where's the transparency, where's the information. There should have been a whole lot more on the table here or on the website explaining why that is in the document. In all his years in his job he would not dare put that before his board or estimate what the heck it was. That was his statement. He hopes the board will table this thing. Yes there are reasons for that to be in there I'd like to see more explanations to why." Jeff-SEQR laws apply regardless of what you include or don't include. This code of ethics provision simply allows the board to simplest way he understands it. The environmental regulations in this state and every state are owners -there is a lot of red tape to deal with. If this board decides to propose an amendment to the zoning code, only an amendment this is not and it kind of goes with Karen's question. It is not project based, it's not character, it's this code of ethics would be if there is a proposed amendment and that amendment in the opinion of the board. If there is a proposed amendment to the zoning code and only a proposed amendment to the wording of the zoning code as codified meaning your adding words or taking words out and that proposed amendment in it has any impact at all on the environment and there are zoning co-provisions that don't really impact the environment under SEQR. So if there is a proposed amendment and it has in the opinion of the board a significant environmental impact a possible significance as well then this board says look ethically we need to present this to SEQR for further review. If the board concludes that this proposed amendment to the zoning code and again this could be a zoning code change that doesn't have an environmental event or if it does it's not a significant environmental impact then this board can say ethically we have determined that this will not have a significant environmental impact. They will ask for an engineering report, there is a written report that says doing x will not cause significant environmental impact and here's the evidence for that and here's the rationale and the board takes that where they get a legal opinion if it happens to be a legal matter where they get both. They look at that and say the lawyer and the engineer, the architects they all said this proposed amended change proposed. It's not a change right yet. This will not have a significant environmental end time that allows the board to do. If they determine based on the evidence and reports that they have this proposed change will not have a significant environment environmental impact they do not need to report it to SEQR. What that allows the town to do is to cut through some of the red tape. Jim mention course change that could occur that could significantly impact SEQR process that might not seem on the surface to be that big a deal to anybody but the board could make a decision, a move forward without a lot of red tape that your trying to avoid to the SEQR

process. Some wording changes to the zoning could make a huge difference in the SEQR process in terms of removing environmental concerns and having the board make the decision. There is nothing in here that I understand makes the review this with an engineering company. There is nothing in any kind of proposed change, they don't have to talk to anybody the board can do it themselves. Is that not correct? Jeff- Partially but that again we are talking about two different things. The code of ethics doesn't dictate how a board changes zoning. He is concerned about that possible impact you could have on the SEQR process going forward. There are already contentions, it's possible to make some subtle changes somewhere for the zoning that will make it even more contentious without anybody really recognizing it. That is really his concern. It needs to be talked out, thought out, talk about it, a lot differently in my opinion you guys make the votes. All I can do is vote in November but at the end of the day you guys have to look at this and say does that belong in there, could it be an adjunct. It should be a separate hearing. I would like to understand more about what kind of restrictions the board has in terms of making changes to the zoning. It's transparent. I'd like to know and that could be a separate entity and talked about separately and voted on separately. That's my opinion. Jeff wants to make it clear he was asked to come and answer questions and give my best explanation. This is complicated there's no doubt. He is not here to sell anything. This is up to you and this is your town and what you want to do and I can appreciate it. There are a lot of questions everywhere about this and many other provisions so this so this provision I believe is particularly confusing because it seems out of place. One of the things he thinks about when he looks at it is what if it's not there, does it change anything. You don't have to do anything if it's not there. Jim said it needs a lot more explanation. If it needs to be part of this I would like to go back and reword it see how these changes get proposed and then where the ethical issue that's related to any kind of zoning change with impacts for SEQR. It's just not clear at all. When he first read this it reminded me what the federal government does and what the state government does when there are numbers of factors which I think have a special thing that they want to get through but they know they'll never get voted on after because they stick it in the defense building. If there is a true reason for it to be in there and it has an impact that's I am sure others could feel comfortable with it then why not word it that way and provide the information for the public., not just me but for the public to see and feel more comfortable. Jeff- Again this provision and the way it is written was not something that he or the board came up with where someone was trying to jam something in there. It was straight from the comptrollers so he thinks everyone can appreciate the suspicion or concerns but at the same time this isn't a situation where someone was trying to jam something in there. This is in the comptrollers so the board looked at it and said OK let's evaluate it and that's

what they are doing. Questions are very good. Jim- It is unfortunate this board is somewhat tarnished by past actions not necessarily about pointing fingers at anyone sitting up there, that's not my point. Scott-that's why we are trying to get a Code of Ethics. Karen- thanked Scott and Jeff for listening. She really appreciates what he is saying when he clarified the law, she did find it helpful. When she suggested tabling the vote, and looking at it and she suggested possibly eliminating it. After what Jeff said I see the value of part of this. One specific change you could make that would make it more helpful to some of us would be that in section 4 after 617, Regulations adopted there under 6NYCRR, part 617, a super majority meaning 4 of 5 members, and 5 that, with the evidence they have been provided that the proposed amendment to the zoning code will not result in any significant adverse environmental impact therefore no further review. It gives you more standing to say we are not trying to pull the wool over anyone's eyes because we know it's so serious to make any kind of change to our zoning and kind of smooth the way with SEQR. 4 of 5 voting members saying there are times when maybe it's worth our time we need most of us if not all of us a unanimous vote. Think that would offer something that acknowledged that perspective. Scott- by the show of hands how many want the SEQR paragraph out of there. Karen asked how about changing it or tabling it. Then she asked how about a hand vote to table it for a month. Scott- "We are not going to vote on that tonight. We will table it and I will either call another meeting or at next month's meeting, just depends on when we can get together. If we add some type of statement to that. How many people would be alright with that? Something along the lines with what Karen said. Response was they would have to see it. Jeff-"I think it would go a long way towards getting a better understanding of what it's doing". Jim- if anyone had any suggestions it's just not the super majority. If anyone has anything in the next 30 days let us know. Scott-basically what this is for I want to hold everyone up here accountable. Like I said we are not bound by the employee handbook. We are not employees of the Town of Shelby. We are elected officials. That's why I want this so we are bound by the Code of Ethics so you can come back and say hey you violated this. Steve -If we can come up with a little a bit different wording and it still sticks with the state comptroller's paragraph so we are still abiding by the state would be alright. Jim- And we would have to see it. Steve-I understand that. Jim-if there is a true reason why it needs to be in here it needs to be explained, clarified in the law. Like the way Jeff explained it -If there were a proposed change to the current zoning law and that change would result in a significant environmental impact then the board would need to submit a SEQR review if it did not. Without that it's really hard to understand. Steve- I understand but as a board member I want to stay by the state comptroller's guidelines ok so I want to make sure we are on the same page doing what you people want what I want and the rest of the board

members want . I do believe we can probably do this but I want it to be in state guidelines. Karen-absolutely.

John- Section 15. Political solicitation. Whether it was inadvertently left out or purposely left out. This section C isn't in our law and it should be in there which reads political party position no municipality officer or employee may while serving as an elected or appointed town employee be a committee person, Chairman, Vice Chairman or other officer of any Town Political party with the exception of committee persons as of the date of this policy in action. We shall be considered grandfathered which it means you cant sit on the board and be on the Republican , Democrat, Independent committee. And that's one thing he felt was left out. Its in the Ridgeway's. Scott said no other town has it in their office it was the only town that had it in. Karen asked what is wrong with it? Everyone asked what is wrong with it. Jim asked what is wrong with it. Why shouldn't it be in ours. If you want it in there we will put it in there but its going to be effective that date but why should I tell you cant volunteer to work somewhere. Karen- But if you just said that before you didn't want to change section 4 unless it was in line with New York State comptrollers suggestion . Scott said that paragraph is not on comptrollers site. John believes Ridgeway has it in there policy because they had some problems and this is the way they dealt with their problems and therefore they won't have the problems again. Steve- this is the Town of Shelby, not the Town of Ridgeway. We should be fending for ourself and not worrying about what the other towns are doing. John-said spoken by somebody who is on the Republican committee, so there you go. Allen Bushoever -So they've been grandfathered in as would Dale , CJ and Darlen? Dale said you were on it for 4 years. John said and what did I say in a meeting Dale I left and I asked the question before I left who else would step down. Steve said he would step down and you said you would step down from the Republican committee am I not correct? You were the first one that said you would. Dale-There is more to the story, there no sense getting into it . Alana Koneski- She had approached the board to be a candidate for being a board member and I am going to confront the Republican Committee. I felt it very intimidating. There were too many board members on that Republican committee and it just seemed like a conflict of interest. Maybe it's done that way but it just felt weird to me to see board members on the Republican Committee. To her it should be a separate entity. Or maybe have one from a board . I think that needs to be changed and I think that's what he is trying to say. I know it's a small town and there is not enough people to stand up and come forward and be part of this but it just seemed relatives and my first question was asked of me when I went in front of the board was do you have any family members or whatever on any of the committees and you should not

have family committees or family members because that is still a conflict of interest. But what John's saying I think should be done. Scot-we will either schedule a meeting before the next town board meeting to go over this again or set up another public hearing before the next town board meeting. I will make sure I let everyone know. Thanks everyone.

After no other comments the public hearing was closed at 7:25PM

Respectfully submitted,
Darlene A. Rich, MMC, RMC
Town Clerk